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No. 69-5363

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

MARK HOWLETT, ETC.,

Petitioner,

VS.

SCOTT ROSE, as Superintendent of Schools for Pinellas County, Florida; WILLIAM GREY, THOMAS PETIT, and THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA,

Respondents.

On Writ of Certiorari To The District Court of Appeal Of Florida For The Second District

RESPONDENT'S BRIEF

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QUESTION PRESENTED

Whether a local School Board, is, by virtue of the sovereign immunity of the state, immune from suit in an action brought in state court, based on 42 U.S.C. Section 1983.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. THE QUESTION OF THE CORRECTNESS OF THE TRIAL COURT'S DISMISSAL OF THE PETITIONER'S COMPLAINT AGAINST THE INDIVIDUAL DEFENDANTS IS NOT FAIRLY OR PROPERLY BEFORE THIS COURT	3
II. THE COMMON LAW DOCTRINE OF SOVEREIGN IMMUNITY APPLIES TO ACTIONS BROUGHT AGAINST STATES, IN THE COURTS OF THAT STATE, PURSUANT TO 42 U.S.C. §1983	4
III. SECTION 768.28 FLORIDA STATUTES IS NOT INVALID AS CONFLICTING WITH FEDERAL LAW	8
IV. A LOCAL SCHOOL BOARD OF THE STATE OF FLORIDA IS CONSIDERED PART OF THE STATE GOVERNMENT FOR PURPOSES OF COMMON LAW SOVEREIGN IMMUNITY FROM LITIGATION BASED ON 42 U.S.C. §1983	10
V. THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA IN THIS CASE SHOULD BE AFFIRMED, BASED ON THE FAILURE OF THE COMPLAINT TO SET FORTH ANY FACTS ON WHICH RELIEF COULD BE GRANTED	14
CONCLUSION	16

TABLE OF AUTHORITIES

CASES	PAGES
1. *Bank v. Brainerd School District,* 49 Minn. 106, 51 N.W. 814 (1892).	13
2. *Bigelow v. The Inhabitants of Randolph,* 80 Mass. 541 (14 Gray) (1860).	13
3. *Bragg v. Board of Public Instruction of* Duval County, 160 Fla. 590, 36 So. 2d 222 (1948).	12, 14
4. *Buck v. McLean,* 115 So. 2d 764 (Fla. 1st Dist. Ct. App. 1959).	12
5. *Cunningham v. The Macon and Brunswick* R.R. Co., 109 U.S. 446 (1883).	6, 7
6. *Ellis v. Dixon,* 349 U.S. 458 (1955)	3
7. *Felder v. Casey,* 139 Wis. 614, 408 N.W. 2d 19 (1987).	6
8. *Felder v. Casey,* 487 U.S. 131 (1988).	5, 6
9. *Ford v. School District of Kendall Borough,* 121 Pa. 543, 15 A. 812 (1888).	13
10. *The Franklin County School Board v. Page,* 540 So. 2d 891 (Fla. 1st Dist. Ct. App. 1989).	9
11. *Garcia v. Board of Education,* 777 F. 2d 1403 (10th Cir. 1985) *(Cert. denied)* 479 U.S. 814 (1986).	13
12. *Goss v. Lopez,* 419 U.S. 565 (1975)	16
13. *Granger and Wife v. Pulaski County,* 26 Ark. 37 (1870).	13
14. *Hill v. Department of Corrections,* 513 So. 2d 129 (Fla. 1987, *cert. denied,* 484 U.S. 1064 (1988).	9
15. *Keifer & Kiefer v. The R.F.C.,* 306 U.S. 381 (1939).	15
16. *Lane v. District Township of Woodbury,* 58 Iowa 462, 121 N.W. 478 (1882).	13

CASES (cont.)	PAGES
17. *Martinez v. California*, 444 U.S. 277 (1980).	5, 6
18. *Mathewson v. New York State Thruway Authority*, 11 A.D. 2d 782, 204 N.Y.S. 2d 904 (1960).	8
19. *McKnett v. The St. Louis & S.F. Ry Co.*, 292 U.S. 230 (1934).	10
20. *Monell v. Department of Social Services* of City of New York, 436 U.S. 658 (1978).	10, 11,14
21. Mt. Healthy City Board of Education *v. Doyle*, 429 U.S. 274 (1977).	4,10, 12,13,14
22. *Murray v. West Baton Rouge Parrish School Board*, 472 F. 2d 438 (5th Cir. 1973).	16
23. *Nevada v. Hall*, 440 U.S. 410 (1979),	7
24. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).	16
25. *Owen vs. City of Independence*, 445 U.S. 622 (1980).	7,10,12,14
26. *Pervis v. LaMarque Independent School District*, 446 F. 2d 1054 (5th Cir. 1972).	16
27. *Pierson v. Ray*, 386 U.S. 547 (1967).	6
28. *Ramirez v. City of Redondo Beach*, 185 Cal. App. 3d 903, 229 Cal. Rptr. 917 (1986) vacated on other grounds, 732 P. 2d 179, 234 Cal. Rptr. 515 (1987).	5
29. *State ex. rel. Allen v. Board of Public Instruction of Broward County*, 214 So. 2d 7 (Fla. 4th Dist. Ct. App. 196).	12
30. *Tenney v. Brandhove*, 341 U.S. 367 (1951).	6
31. *Will v. Michigan Department of State Police*, _____ U.S. _____, 109 S. Ct. 2304 (1989).	4, 5, 7

CONSTITUTIONAL PROVISIONS

1. U.S. Const. Amend. XI	*Passim*
2. Fla. Const. Art. V §3 (6) (4)	9

STATUTES, RULES, AND REGULATIONS

	PAGES
1. 42 U.S.C. §1983	*Passim*
2. Cal. Gov. Code Ann. 845.8a	5 -
3. Fla. Stat. 230.222	11
4. Fla. Stat. 230.2319	11
5. Fla. Stat. 230.23(10)(j)	11
6. Fla. Stat. Ch. 236	12
7. Fla. Stat. 239.053	11
8. Fla. Stat. 373.503	12
9. Fla. Stat. 373.563	12
10. Fla. Stat. 767.28	*Passim*
11. Fla. Adm. Code 6B-4.009	11
12. Wis. Stat. 893.40	6
13. Sup. Ct. R. Rule 10	3
14. Laws of Florida 1848, ch. 230 §32	11

ANNOTATIONS

1. 9 ALR 904	13
2. 160 ALR 1	13

STATEMENT OF THE CASE

The primary issue before this Court does not require this Court to address the merits of Petitioner's allegations against the School Board of Pinellas County, Florida. Therefore, little time will be devoted here to disputing the recitation of events set forth in Petitioner's Brief. The Circuit Court of Pinellas County, Florida has already determined, in a related proceeding, that the "search" of Petitioner's vehicle was lawful (JA18). Furthermore, Petitioner's complaint describes Petit's actions as trying to unblock the exit to a parking lot (JA5). This conduct was reasonable under the circumstances alleged. Petitioner's own complaint (JA10 & JA11) also sets forth allegations that he was notified of the nature and the basis of the accusations against him, and that he was given a chance to explain the circumstances to Mr. Petit. Thus, the procedural due process requirements established by this Court for student suspension cases were adhered to by Respondents. It is also submitted that the language of the *Code of Student Conduct* in use in Pinellas County Schools is sufficiently clear in its use of the term "alcoholic beverage" to provide substantive due process.

Following the denial by the trial court of Petitioner's Motion for Re-Hearing of the Court's Order Granting Respondents' Motion to Dismiss, a Notice of Appeal was filed. It is important to note that only three issues were presented to the appellate court:

"I. Whether the question of a state and its subdivisions' sovereign immunity to an action brought in a state court under the Federal Civil Rights Act of 1871, 42 U.S.C. §1983, is a question of state or federal law?

II. Whether under Federal Law a Florida School Board is immune from suit under §1983?

III. Whether it is necessary to exhaust State remedies under the Florida Administrative Procedure Act before bringing an action for damages in a Florida Court under §1983?"

At no point was the issue whether the individually named Defendants (Rose, Gray, and Petit) were improperly dismissed from the action presented to the State Appellate Court.

Basing its decision on the first two issues, the Appellate

Court upheld the Trial Courts' decision, and did not render an opinion on the issue of exhaustion of administrative remedies. The Supreme Court of Florida declined to review the case, and this petition followed.

SUMMARY OF ARGUMENT

This Court should not address the issue whether the complaint filed against the individually named Defendants, Scott N. Rose, William Gray and Thomas Petit, was properly dismissed. The issue of the propriety of that dismissal was not presented to the Second District Court of Appeal for the State of Florida, and it would therefore be manifestly unfair both to those individuals, and to the courts of the State of Florida for this Court to decide that issue.

Common law immunities and defenses to actions based on 42 U.S.C. §1983 have long been recognized by this Court, as long as they were well established at the time Congress enacted what is now codified as 42 U.S.C. §1983. The defense of sovereign immunity is such a defense. It was well established by 1870, and there is no evidence that Congress intended to abrogate it by its passage of 42 U.S.C. §1983.

Common law sovereign immunity was not created by §768.28 of the Florida Statutes. Instead, that statutory provision waives sovereign immunity to a limited extent. Therefore, that statute is not inconsistent with federal legislation. Moreover if §768.28 is invalid, the defense of common law sovereign immunity would not be diminished, since the effect of the statute's invalidity would be that the State of Florida had not waived sovereign immunity at all. Under Florida law, state courts lack jurisdiction to entertain actions against the state or its subdivisions, unless there has been a waiver of sovereign immunity.

For purposes of sovereign immunity, a school district in the State of Florida should be considered a part of the state government. School districts were organized to aid the state in public education. The State of Florida by statute and by regulation tightly controls the exercise of power by local

school boards. School boards or school districts in the State of Florida have long been considered an integral part of state government, especially for sovereign immunity purposes. Virtually every state in the union has also regarded school districts, for sovereign immunity purposes, as part of the state government. Therefore, this court should recognize that the defense of sovereign immunity exists for local school districts, at least in the State of Florida, for actions based on 42 U.S.C. §1983.

In any event, the judgment of the Second District of Appeal of the State of Florida should be affirmed, because ample alternative grounds, raised in the trial court, exist for dismissing Petitioner's Complaint.

ARGUMENT

I

THE QUESTION OF THE CORRECTNESS OF THE TRIAL COURT'S DISMISSAL OF THE PETITIONER'S COMPLAINT AGAINST THE INDIVIDUAL DEFENDANTS IS NOT FAIRLY OR PROPERLY BEFORE THIS COURT.

This Court's jurisdiction is founded on the fact that another court has rendered a decision, in this case the Florida Second District Court of Appeal, Sup. Ct. Rule 10. It is obvious from the record that for whatever reason, Petitioner chose not to present to that court the question of whether the complaint against Rose, Gray and Petit should have been dismissed. Petitioner is now foreclosed from raising this issue. It is submitted that it is unfair to the Second District Court of Appeal to accuse that Court of not rendering a clear decision on the issue of the individual's protection (if any) under the theory of sovereign immunity, because that court was never asked to render a decision on that subject.

This Court traditionally declines to rule on questions first presented here. In *Ellis v. Dixon*, 349 U.S. 458 (1955) a

petitioner attempted to raise the issue of the alleged vagueness of a local school board's rules on the use of school facilities for non-scholastic purposes for the first time. This Court stated that "The question of whether the regulations are unconstitutionally vague was not raised below, and hence is not open here", p. 460.

Even if the Trial Court erred in granting the Motion to Dismiss as to the individually named defendants, for the reasons set forth, (JA19), that issue was waived by Petitioner by failing to present that question on appeal. This Court should not indicate that the Second District Court of Appeal of the State of Florida committed an error by failing to rule correctly on an issue not presented to it. The focus of this Court's deliberation should be whether the Trial Court erred in dismissing the complaint against the School Board of Pinellas County, and the remainder of this Brief will be devoted to that, the only issue fairly before this Court.

II.

THE COMMON LAW DOCTRINE OF SOVEREIGN IMMUNITY APPLIES TO ACTIONS BROUGHT AGAINST STATES, IN THE COURTS OF THAT STATE, PURSUANT TO 42 U.S.C. §1983.

It is apparent from the authorities relied on by Petitioner, that a number of different types of immunities have become confused with each other. It is therefore necessary to discuss briefly what issues do *not* support petitioner in this case.

First, petitioner cites cases dealing with immunity given to states by the 11th Amendment of the Constitution of the United States, and especially relies on *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274 (1977), which held that local school districts in Ohio are not protected by the 11th Amendment. The plain language of that Amendment indicates that it applies only to "the judicial power of the United States", and therefore the decision in *Mt. Healthy* does not compel or even suggest the outcome here. *Will v.*

Michigan Department of State Police, ____ U.S. ____, 109 S. Ct. 2304 (1989). In any event, the 11th Amendment was not even asserted as a basis for dismissing the Complaint filed in the Trial Court (JA13-18).

Also, this Case does not deal with a state statutory grant of immunity or of statutory procedural requirements that potentially have the effect of granting immunity. Thus, two recent opinions of this Court, heavily relied on by Petitioner, must be distinguished.

The first of those, *Martinez v. California*, 444 U.S. 277 (1980) involved an action initiated in State Court. The immunity discussed in *Martinez*, however was different from the traditional concept of sovereign immunity. A careful reading of *Martinez* reveals that a statute, §845.8a of the Cal. Gov't. Code Ann. (West Supp. 1979) *created* immunity for a certain type of activity. Indeed, apparently all governmental immunity in the State of California is *created* by statute. The Courts of that state abolished the doctrine of sovereign immunity, and the state legislature passed a Tort Claims Act to recreate the defense, *Ramirez v. City of Redondo Beach*, 185 Cal. App. 3d 903, 229 Cal. Rptr. 917 (App. 2nd Dist., 1986), vacated on other grounds at 732 P. 2d 179, 234 Cal. Rpt. 515 (1987). Thus, the immunity discussed in *Martinez* is derived, not from the long established judicial doctrine of sovereign immunity, but solely from an enactment of the California legislature. Quite correctly, this Court ruled that legislative enactments in conflict with federal law could not be enforced. However, since §768.28 of the Florida Statutes does not *create* the immunity asserted as a defense in the instant case, the opinion in *Martinez* provides little, if any, guidance in resolving the issue at bar.

Similarly, the opinion of this court in *Felder v. Casey*, 487 U.S. 131 (1988) is not on point. That opinion discussed the enforcement of procedural requirements in an action against individuals, not against any governmental entity. As set forth earlier, the question of whether or not individuals are protected from §1983 actions by the doctrine of sovereign

immunity is not fairly before this Court, since that question was not preserved in the appeal to the Second District Court of Appeal in Florida. A reading of the state court opinion in *Felder v. Casey,* 408 N.W. 2d 19 (Wis. 1987) reveals that sovereign immunity, as distinct from a statutory grant of immunity, was not an issue. Almost certainly this is due to the fact that individuals employed by the sovereign did not traditionally enjoy the sovereign's immunity. (See for example, the discussion of the extent of sovereign immunity found in this Court's opinion of *Cunningham v. Macon and Brunswick R.R. Co.,* 109 U.S. 446, 452 (1883). This position is further confirmed by a reading of Wisc. Stat. §893.80. It is clear that the procedural requirements struck down by the Court were *created by statute,* not founded on long-established legal principles. Therefore, like *Martinez, Felder* does not compel the answer to the question raised in this case.

Petitioner seems to take the position that because this Court has not regarded statutory grants of immunity as a defense to actions based on 42 U.S.C. §1983, then no immunity, of any nature, exists to such litigation. Such a position is untenable, and in direct conflict with the previous opinions of this Court.

In *Tenney v. Brandhove,* 341 U.S. 367 (1951), this Court addressed the question of whether or not the immunity traditionally enjoyed by legislators for legislative acts was intended to be abrogated by the United States Congress in passing what is now codified as 42 U.S.C. §1983. This Court acknowledged that there was no evidence on which to base such a finding, thus recognizing that some immunity existed from §1983 actions.

In *Pierson v. Ray.* 386 U.S. 547 (1967), this Court recognized that judges, acting in their judicial capacity, enjoyed the protection of a similar, long established immunity. "The legislative record gives no clear indication that Congress intended to abolish *wholesale* all common law immunities. Accordingly this Court held in *Tenney v. Brandhove,* (Citation omitted) that the immunity of legislators for acts within

the legislative role was not abolished. The immunity of judges for acts within the judicial role is equally well established, and we may presume that Congress would have specifically so provided had it wished to abolish the Doctrine," Id. at 554 (emphasis added). Thus, any immunity established at common law, prior to the Civil Rights legislation of the 1870's, is still a defense against a 42 U.S.C. §1983 claim. *Owen v. City of Independence,* 445 U.S. 622, 638 (1980). In *Will v. Michigan Department of State Police,* _____ U.S. _____, 109 S. Ct. 2304 (1989), this Court held that states were not persons within the normal meaning of the word, and any interpretation of §1983 to the contrary would have to be supported by a clear expression of Congressional intent. The same logic applies here, had Congress intended there to be no defense of sovereign immunity, there would have been a clear expression of intent to abolish that defense.

The Doctrine of Sovereign Immunity is such a well established common law immunity as to fall in the category of immunities that currently exist against 42 U.S.C. §1983 claims. Even a cursory check of the former opinions of this Court reveals that the doctrine is indeed one of long standing. For example in *Cunningham v. The Macon & Brunswick R.R. Co.,* 109 U.S. 446 (1883) the Court held "It may be accepted as a point of departure *unquestioned,* that neither a state nor the United States can be sued in any Court in this country without their consent" (emphasis added).

More recently in *Nevada v. Hall,* 440 U.S. 410 (1979), the history of sovereign immunity and its legal basis were discussed at length. Based on the facts recited in that discussion, it is submitted that few, if any, common law immunities were better established by the 1870's than the Doctrine of Sovereign Immunity.

Petitioner also implies that even if sovereign immunity is a defense to claims for damages, then surely equitable or injunctive relief could still be sought without contending with sovereign immunity as a defense. In *Cunningham,* e.g., the Court, as has already been indicated, detailed the exceptions

to the defense of sovereign immunity that existed in the 19th century. An exception for equitable actions against the sovereign itself does not appear. Furthermore, in affirming the trial court's dismissal of this case Florida District Court of Appeal has obviously determined that common law sovereign immunity has not been waived, even as to actions seeking equitable or injunctive relief. This aspect of common law sovereign immunity is not an invention of the State of Florida. For example in the Case of *Mathewson v. New York State Thruway Authority,* 11 A.D. 2d 782, 204 N.Y.S. 2d 904 (1960), the Supreme Court of New York held that under the doctrine of sovereign immunity an equitable action could not be brought against a government agency itself.

Thus, it is clear that sovereign immunity exists as a defense to any action brought against a state in the state's own courts pursuant to 42 U.S.C. §1983, *Will v. Michigan Department of State Police,* _____ U.S. _____, 109 S. Ct. 2304 (1989). Moreover, because state courts in Florida lack jurisdiction to entertain claims against the state or its political subdivisions, the existance of sovereign immunity means that those courts have no authority, absent a waivor, to adjudicate Section 1983 claims against entities that are protected by sovereign immunity. See Brief of the National Association of Counties, et al, as *amici curiae* in support of Respondents.

III.

SECTION 768.28, OF THE FLORIDA STATUTES IS NOT INVALID AS CONFLICTING WITH FEDERAL LAW.

Petitioner has somewhat shifted his fire from the concept of sovereign immunity to Florida §768.28 itself. It must be stressed once again that respondent is asserting common law sovereign immunity as a defense in this Case. Respondent does not contend that §768.28 granted any immunity to the State of Florida that did not exist at common law. Rather, §768.28 waived that immunity to a limited extent. It cannot seriously be contested that the waiver so far as it goes does *not* include actions based on 42 U.S.C. §1983. *Hill v. Department of Corrections,* 513 So. 2d 129 (Fla. 1987).[1]

It must also be mentioned that the validity of §768.28 Fla. Stat. was not raised before the state courts, and therefore any question as to its validity is not fairly before this Court (See discussion in "I" Supra). However, some time will be spent in addressing the questions raised on this point by the Petitioner. If Petitioner's position is carried to its logical conclusion, a finding would result that would require states that enacted legislation waiving sovereign immunity to any extent to also pass legislation waiving sovereign immunity to actions or claims based on 42 U.S.C. §1983. Such a ruling should only be based on the clearest expression of congressional intent, and absolutely no such expression of intent has been placed before this Court.

Let us assume, however, for the of the discussion, that §768.28 is invalid because it conflicts with Federal Law. That assumed invalidity would have no effect on this Case. If the Florida Legislature had never passed the law codified as §768.28 Florida Statutes, the argument in this Case would still be whether or not common law sovereign immunity offers any protection against claims based on 42 U.S.C. §1983. If this Court should find that §768.28 was for some reason invalid, that statute would become a nullity. Thus, there would be no waiver of sovereign immunity in the State of Florida. Such an action would not create a greater waiver of sovereign immunity than currently exists.

Finally, on this point, Petitioner cites a number of cases

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[1]Petitioner cites several Florida cases as being in conflict with this statement, but each fails to discuss the issue of sovereign immunity. In particular, Petitioner refers to the case of *Franklin County School Board v. Page,* 540 So. 2d 891 (1st D.C.A. 1989), "(holding that local government units do not enjoy a sovereign immunity from §1983 suits in State Courts)". A reading of that opinion reveals, once again, that sovereign immunity was not addressed by that court. Moreover, had such a concfict existed in the State Court opinion, the State Supreme Court could have accepted jurisdiction to resolve that conflict. Fla. Const. Article V §3(6)(4).

in which States, through their courts or otherwise, simply refused to enforce Federal legislation. However, this is not such a case. Thus, the courts of the State of Florida are not refusing to hear an action simply because that action is based on Federal Law, as in *McKnett v. St. Louis and S.F. Ry Co.,* 292 U.S. 230 (1934), they have simply recognized that a defense to such actions exists in the form of sovereign immunity. The state court decision criticized in *McKnett* was far broader in scope than the state appellate decision in this case. Indeed, as petitioner concedes, this court has never held that a state must allow §1983 actions to be heard in its courts. Therefore, there certainly is no reason to not only require such actions to be heard, but to also take the step of abolishing long-established immunities and defenses that exist as to particular defendants in state court.

For further discussion of Fla. Stat. §768.28, see Brief of the National Association of Counties, *et al,* as *amici curiae* in support of Respondents.

IV.

A LOCAL SCHOOL BOARD OF THE STATE OF FLORIDA IS CONSIDERED PART OF THE STATE GOVERNMENT FOR PURPOSES OF COMMON LAW SOVEREIGN IMMUNITY FROM LITIGATION BASED ON 42 U.S.C. §1983.

Having established that common law sovereign immunity does provide protection against 42 U.S.C. §1983 actions, the sole remaining question is whether or not a school board in the State of Florida enjoys the benefit of that protection.

Respondent is not unmindful that this court has held that school districts in the State of Ohio enjoyed no protection from the 11th Amendment, *Mt. Healthy City Board of Education v. Doyle,* 429 U.S. 274 (1979), that a city enjoys no special immunity from §1983 suits, *Owen v. City of Independence,* 445 U.S. 622 (1980), and that school districts in many states are "persons" within the meaning of Section 1983, *Monell v. Department of Social Services of City of New York,* 436 U.S.

658 (1978). Notwithstanding those decisions, there is ample authority to support Respondent's position that, for sovereign immunity purposes, a school board in the State of Florida should be treated as a branch of state government and given the protection of that doctrine.

In the first place, school districts were created by the legislature in Florida in 1848. Thus, they are not, and were not, groups of citizens organizing themselves into a corporation, thereby accepting the liabilities of such an organization together with its benefits. The legislation creating school districts in Florida has been filed under separate cover with the Clerk of this Court, with a copy being provided to opposing counsel. From this legislation, it can be seen that the *state* controlled such mundane aspects of school operation as the method of keeping attendance records (Laws of Florida, 1848, Ch. 230 §32, Pg. 34). Such control exists in current statutes as well. This control ranges from trivial matters (see for example §230.222 Fla. Stat. which disregards local preference and reads "The School Board shall not take action to prohibit school bands from playing the song commonly known as 'Dixie', nor shall it take action to prohibit the playing of 'Dixie' at school functions by non-school bands", to matters of curriculum and purchasing. For example, purchasing of goods must comply with regulations established by the Department of General Services, §230.23 (10)(j) Fla. Stat. Curriculum is tightly controlled as well, for example by §230.2319 Fla. Stat. which sets forth, inter-alia, course requirements for grades 4-8. Also, §239.053 Fla. Stat. establishes the State Board of Education as the "chief policy making and coordinating body of Public Education in Florida". Based on that statute, the Department of Education has issued a number of regulations further controlling every aspect of school operations. Even the grounds for which a tenured teacher may be discharged from employment by a local school board are defined by state regulation, §6B-4.009 Fla. Adm. Code. The regulations promulgated by the Department of Education for the State of Florida have also been supplied to the Clerk of this Court, with a copy being fur-

nished to opposing counsel. The extent of state control of school districts in Florida is a factor to consider in deciding whether a school district is part of the state for sovereign immunity purposes.

In *Mt. Healthy* this court has previously expressed an intent to look on the ability to levy taxes and issue bonds as important criteria in determining whether or not a local school district should be considered part of the state for 11th Amendment purposes. If that ability is also considered for sovereign immunity purposes, local school boards in Florida should still be considered part of the state, notwithstanding the fact that school boards do have some power to issue bonds and to levy taxes. In the first place, the school board's power to levy taxes and to issue bonds is, like so much of education in Florida, given and controlled by a state statute, chapter 236 Florida Statutes. Secondly, entities unquestionably part of state government have the power to issue bonds and to levy taxes. For example, see chapter 373 Fla Stat., creating water management districts, and particularly §373.503, authorizing the levy of taxes and §373.563, authorizing the issuance of bonds by those districts. Thus, this ability should not be determinitive of the question.

Florida, apparently unlike the State of Ohio, has repeatedly held that school districts are an integral part of state government, *State ex. rel. Allen v. Board of Public Instruction of Broward County*, 214 So. 2d 7 (Fla. 4th Dist. Ct. App. 1968). This has been, and is, true especially in cases involving the question of sovereign immunity. *Buck v. McLean*, 115 So. 2d 764 (Fla. 1st Dist. Ct. App. 1959) and *Bragg v. Board of Public Instruction of Duvall County*, 36 So. 2d 222 (Fla. 1948). Significantly, in both *Buck* and *Bragg*, the courts of the State of Florida recognized the distinction between school districts which do enjoy the protection of common law sovereign immunity and cities, which, as this court found in *Owen*, do not.

Florida is not the only state that has long held school districts to be part of state government. Some federal courts,

even since *Mt. Healthy*, have held that where a school district is considered part of the state, even 11th Amendment protection is available. See *Garcia v. Board of Education*, 777 F. 2d 1403 (10th Cca 1985), cert. denied 179 U.S. 814 (1986). In *Lane s. District Township of Woodbury*, 58 Iowa 462, 12 N.W. 478 (1882) it was held that the sole purpose of school districts is to facilitate the *state's* (emphasis added) providing education for its citizens, and that, therefore, sovereign immunity was applicable to an action in tort brought against the township. Many other states have held that for sovereign immunity purposes a school district, or its equivalent, is a branch of state government, *Bank v. Brainerd School District*, 49 Minn. 106, 51 N.W. 814 (1892); *Ford v. School District of Kendall Borough*, 121 Pa. 543, 15 A 812 (1888), vacated when Pennsylvania waived sovereign immunity, *Ayala v. Philadelphia Board of Public Instruction*, 453 Pa. 584, 304 A 2d 877 (1973); and *Lane v. District Township of Woodbury*, 58 Iowa 462, 12 NW 478 (1882).

Litigation against school districts was not as common in days of yore as it is today. However, there are even cases prior to the enactment of the law now codified as 42 U.S.C. §1983 (1871) that acknowledge that school districts are immune from suit. In *Granger and wife v. Pulaski County*, 26 Ark. 37 (1870) a suit was filed against a county for the negligent construction and maintenance of a bridge. The Arkansas court held that the county was a branch of state government and therefore immune to suit. The court mentioned, albeit in dicta, that a school district would enjoy the same sort of protection.

In *Bigelow v. Inhabitants of Randolf*, 80 Mass. 541 (14 Gray), (1860) suit was filed against a township which had undertaken the duties of operating a public school, for allegedly being negligent in the maintenance of the school property. Recognizing that there are some instances in which a township may be liable, the court stated "nor can this action be maintained for the town's neglect of its corporate duty concerning the keeping of schools and the providing of school houses — a duty imposed for public purposes exclusively, and

without its corporate consent — because no statute gives a private action against a town for an injury caused by neglect or violation of the school laws except by St. 1845 C. 214, to a child who is unlawfully excluded from public school instruction," once again demonstrating that school functions enjoy the protection of sovereign immunity.

These two very old cases demonstrate that even at the time Congress passed the law now codified as 42 U.S.C. §1983, school districts were protected by sovereign immunity. This factor distinguishes school boards from cities, based on the logic in *Owen*. In short, the general rule appears to be that school districts are considered part of state government for sovereign immunity purposes, 9 ALR, 904 and 160 ALR 1 (cited with approval in *Bragg*, supra). Although *Mt. Healthy* entertained an action against an Ohio School Board, and *Monell* expressly found that school boards were "persons" for §1983 actions, and enjoyed no *absolute* immunity from such actions, *Monell* was limited to local government units that are *not* considered part of the state. For sovereign immunity purposes in Florida, school boards have always been viewed as part of the state. Also, the finding that sovereign immunity protects school boards from suit does not bar all litigation against such entities, since Federal Courts remain available. Thus, the Congressional intent that this Court found to be present in *Monell*, that school boards be subject to suit under Section 1983 is not frustrated.

There are reasons for such holdings that have been set forth in the opinions cited. As indicated earlier, one reason is that school districts were created by states to assist in the implementation of state wide education. Also school boards have only those powers given to them by the state. One opinion pointed out that a catastrophic injury could result in the closure of the schools if the district could be held liable in tort for that injury, thus frustrating the entire purpose for which the district was established, to wit the education of children.

None of these reasons is inconsistent with the purposes of 42 U.S.C. §1983, which was designed to protect citizens

against individuals acting under color of state laws. It is clear that in the 19th century, school districts, for sovereign immunity purposes were not considered individuals, but part of the state. It is submitted that the reasons for the holdings concerning sovereign immunity are no more incompatible with §1983's purposes than those asserted to support judicial and legislative immunity.

This court has, in the past, recognized that entities created by a sovereign may become imbued with that sovereign's immunity, *Keifer and Keifer v. R.F.C.*, 306 U.S. 381 (1939). In the case at bar, Respondent only asks that this Court recognize the clear intent of the various states to have the local school districts created by them to be imbued with the same sovereign immunity enjoyed by the states themselves, as that intent has been expressed by over a century of judicial precedent.

V

THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA IN THIS CASE SHOULD BE AFFIRMED BASED ON THE FAILURE OF THE COMPLAINT TO SET FORTH ANY FACTS ON WHICH RELIEF COULD BE GRANTED.

Even though the discussion of the issue before this court is concluded, it must be said that notwithstanding the merits of the earlier discussion, the judgment from which Petitioner seeks relief should be affirmed.

Petitioner's Complaint sets forth three separate areas of alleged violations by Respondent. The first is, that an employee of the Respondent, Thomas Petit unlawfully "searched" Petitioner's vehicle. However, under the facts as alleged in the Complaint, Petit was acting reasonably in trying to remove a vehicle that was blocking access to a parking lot. The mere fact that alternative courses of action were available, does not render Petit's actions unreasonable. While

not conceding that Petit "searched" Petitioner's car, his actions were reasonable (even, if they are to be considered a "search"), and hence, are lawful, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). The same court, although a different division that dismissed Petitioner's Complaint, found the "search" to be reasonable (JA18).

Next, Petitioner claims that the term "alcoholic beverage" as used in the *Code of Student Conduct* of the Pinellas County School Board was so vague as to deny Petitioner substantive due process. Without belaboring the point, the term "alcoholic beverage" is of sufficiently plain meaning to provide substantive due process. Codes of student conduct do not have to be written with the same precision as Penal Codes, and language far vaguer than that complained of in the instant case has been upheld in the courts. See, for example, *Murray v. West Baton Rouge Parrish School Board*, 472 F. 2d 438 (5th c.r. 1973) and *Pervis v. LaMarque Independent School District*, 446 F. 2d 1054 (5th c.r. 1972).

Lastly, Petitioner complains of being denied procedural due process. However, this Court has held that procedural due process, in cases involving student suspensions of fewer than 10 days requires only that the student be given notice of the allegations, the basis for believing the student guilty, and an opportunity for the student to give his or her explanation of the events, *Goss v. Lopez*, 419 U.S. 565 (1975). From paragraph 33 of the Complaint (JA10 and JA11) it is obvious that this procedural due process was followed, and that Petitioner is only alleging that Mr. Petit declined to conduct further investigation after hearing Petitioner's version. Hence, Petitioner's procedural due process rights were not violated.

It is submitted that notwithstanding the decision this Court makes on the issue presented to it, the judgment appealed from should be affirmed, since ample alternative grounds exist to support the Trial Court's finding.

CONCLUSION

The judgment of the Second District Court of Appeal of Florida should be affirmed.

Respectfully submitted,

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